

**Testimony for the House of Representatives Government Reform
Subcommittee on Federalism and the Census**

Oversight Hearing
“Brownfields and the Fifty States: Are State Incentive Programs Capable of
Solving America’s Brownfields Problem?”

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Michigan's Brownfield Redevelopment Programs

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I. Introduction and Background

Michigan has a long history of industrial development. Most people think of the auto industry when they think of Michigan, which is very fitting. Automobile manufacturing began in Michigan at the turn of the last century and the auto industry grew in prominence throughout the early 1900s. In addition, Michigan is home to other industries as well. Major chemical manufacturing businesses were established in Michigan in the late 1800s, as were large furniture, paper, food, and pharmaceutical industries. These and other industries all required thousands of laborers, and contributed to the rapid urbanization of Michigan's cities throughout the first half of the 20th century, thus creating the foundation for today's focus on brownfield redevelopment.

Changes in development patterns started in the post World War II housing boom. Most residential areas of the larger cities were already built out, and new homes were being constructed in the nearby suburbs, attracting families. Even as the suburbs grew, most industrial activity still occurred in the cities. Over time, however, businesses followed their employees to the suburban areas, enticed by cheap land, lower taxes, highway access, and a ready and willing skilled workforce. Additionally, technology and manufacturing advancements created a need for different sized and flexible production space, and increased auto transportation led to a need for large parking areas for employees. These and other causes led to an abandonment of obsolete commercial and industrial buildings and very often contaminated land and groundwater due to decades of manufacturing related activities. These abandoned properties, with all their attendant physical and environmental challenges, are what we now refer to as "brownfields."

It is important to note that the abandonment of outdated or inefficient buildings and properties is still occurring in Michigan. The first tier suburbs that benefited initially from the post war boom are now facing the loss of jobs, businesses, and residents to their once-rural neighboring communities. In an effort to remain viable in an increasingly competitive marketplace, many Michigan businesses are shutting their doors in order to reduce their costs and find a competitive advantage. In the last two years, major manufacturers in Albion, Greenville, Marshall, and Grand Rapids have either closed their facilities completely or have announced that they will be closing and moving major parts of their operations. These plant closings not only have a substantial impact on local economies, but also leave properties that have little or no chance of ever being used in the same manner.

II. Challenges of Brownfields

Brownfields have several unique attributes that make them not only more expensive to redevelop, but also make it difficult to attract private investors.

Obstacles include: little or no information regarding historical material handling and disposal practices and the environmental consequences that may result from those practices; extremely high investigation and remediation costs that must be incurred before any construction activities can take place (adding months or years to the development); outdated infrastructure such as roads, water, sewer, and electrical service; and demolition costs. Many brownfield sites have to be completely converted to other uses, such as commercial or residential, either due to changing land use conditions or the incompatibility of more intensive property use with the surrounding neighborhoods. Communities that want to facilitate redevelopment by acquiring brownfield sites are, for the most part, unable to find funds to purchase property. In assuming such a custodial role, they frequently cannot afford to undertake the steps necessary to protect the public from existing environmental hazards (known as “due care” under Michigan’s program) prior to finding a developer, much less to procure cleanup funds without an interested developer ready to take over when the site is prepared.

III. What Michigan is Doing to Overcome these Challenges

Michigan has been a leader in promoting redevelopment of brownfield sites by taking a three pronged approach at eliminating development obstacles. This approach includes - the use of numerous economic development and tax incentives; public investments to fund cleanups; and changes in liability standards to allow new purchasers to avoid liability for contamination that they did not cause.

A. Tax Incentives

1. Renaissance Zones

The Renaissance Zone program is a valuable and effective tool. Created by PA 376 of 1996, it is used to encourage the development of selected areas across the state. Businesses located within these zones are exempt from:

Local Real Property Taxes (General property taxes on land and buildings are nearly 100% abated);

Local Personal Property Taxes (These general property taxes are nearly 100% abated for the business’ personal property that is located in the zone);

Six mil State Education Tax (SET) (The state property tax levy for schools is 100% abated);

Single Business Tax (A tax credit is allowed against the Michigan Single Business Tax (SBT) for business activity attributable to the zone);

Local Income Tax (City corporate income taxes, if applicable in the zone, are 100% abated);

Utility Users Tax (This applies only in the City of Detroit, which levies a 5% tax on utility bills. Businesses located within one of the zones are exempt from this tax).

Residents in these zones have the same benefits, including exemptions from both local and state income taxes. Currently, there are 152 geographic locations in 38 of Michigan's 83 ties that are virtually-tax free.

2. Single Business Tax Credits

The state of Michigan provides Single Business Tax (SBT) credits, on a case-by-case basis, to help with the expense of demolition, environmental cleanup and other remedial actions needed to facilitate reuse of undesirable properties. Credits are available for up to 10% of eligible investments to a limit of \$30 million. All brownfield SBT credits must be applied for through the Michigan Economic Growth Authority (MEGA). (Brownfield SBT credits awarded for \$1 million or less must be approved by the chairperson of MEGA. Brownfield SBT credits awarded for over \$1 million, but \$30 million or less, must be approved by the MEGA board.) Since June 2000, the program has awarded more than \$273 million in credits that in turn have generated more than \$3.8 billion of private investment in Michigan's distressed urban and suburban communities. One major advantage of these credits, is that a developer can pass them through to subsequent purchasers and lessees, or lenders can accept credits to offset the risks of their investment in the projects.

B. Economic Development Incentives

1. Tax Increment Financing

In addition to qualifying for SBT credits, contaminated and, under Michigan's Brownfield Redevelopment Financing Act (PA 381 of 1996, as amended), some blighted and functionally obsolete properties, may qualify for tax increment financing (TIF) for specific redevelopment-related costs. This allows projects that are identified by one of 249 Brownfield Redevelopment Authorities across the state to capture local taxes and school taxes to reimburse developers for cleanup-related costs. An eligible property is property that was used or is currently used for commercial, industrial, or residential purposes and is either in one of 103 qualified local governmental units (core communities) and is known to have been impacted by releases of hazardous substances at levels that exceed criteria (a "facility" as defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act), is functionally obsolete, or blighted **or** is not in a qualified local governmental unit and is a "facility" under Part 201. Parcels that are contiguous and adjacent to the eligible property are also considered eligible if development of the contiguous parcels will increase the captured taxable value of the subject property.

Baseline environmental assessments, "due care" actions and other cleanup activities qualify for TIF at facilities, and demolition, lead and asbestos abatement and infrastructure improvement costs qualify for TIF in the core communities.

The Department of Environmental Quality has approved over \$66 million in eligible environmental activities costs at brownfield sites at some 80 different projects. These activities are expected to generate \$1.5 billion in private investment, create 8000 jobs and redevelop some 1700 acres across Michigan.

The MEGA Board has approved over \$241 million in total infrastructure and site preparation activities from over 81 work plans in 50 of Michigan's core communities.

C. Funding for Contaminated Site Assessment and Cleanups

1. Site Assessments

Assessing brownfield sites is a critical component in the redevelopment process, giving a full picture of the historic uses of a property, where contamination might be present, how much cleanup will be necessary, and to help potential developers to understand their risks and obligations. The DEQ has been a leader in providing grants to local governmental units to perform Phase I and Phase II site assessments. 117 grant projects, supported from state funds, have been given to 44 communities to do site investigations to support redevelopment efforts. In addition, the DEQ's Superfund Site Assessment Group performs up to 12 brownfield assessments for local units of government every year. They have completed over 100 such assessments in Michigan communities. Funding for this program comes from the EPA. In addition to these programs, the DEQ received a \$250,000 EPA site assessment grant in 2004 to conduct Phase I and II assessments at 7 rural brownfield sites in conjunction with state funded cleanups.

2. Site Cleanups

The DEQ has programs which provide grants and loans directly to communities for redevelopment projects and the DEQ directly oversees state-managed cleanups including state-lead Superfund site cleanups.

a. Grants And Loans

Since 1992, Michigan has provided local governments with \$122 million in grants and loans for some 300 individual projects. This public investment helped to create an estimated 13,700 jobs and leveraged some \$2.7 billion in new investments. In 2005, \$3.4 million in grants were awarded to 8 recipients and \$1.4 million was loaned to 5 recipients. Currently there is about \$12.9 million in grant money available (plus another \$7.5 million to be appropriated), and about \$9 million in loans (with another \$22.5 million to be appropriated, plus proceeds from loan repayments). Either grants or loans can be used for site assessments, cleanup costs, and in some circumstances, demolition. Lead paint and asbestos abatement are eligible expenses for grants and loans.

b. State And Federally Funded And Managed Cleanups

The State of Michigan has also invested state funds to investigate, clean up, and monitor 1674 individual contaminated sites, spending over \$585 million in the last 17 years. This includes over \$440 million from two environmental bonds passed in 1988 and 1998. Many of these sites have been abandoned or tax-reverted and are now owned by the state or municipalities. This also includes liable party cleanup sites that the state is overseeing.

Under the Superfund program, the DEQ has 20 projects currently managed where the state is the lead on a least a portion of the project and 13 that are completed.

Using the state's collection of fees for wholesale gasoline sales, the new Refined Petroleum Fund is being proposed for \$45 million for cleanups of leaking underground storage tanks (LUSTs) under a reimbursement program to owners and operators, and \$15 million for state-lead cleanups of orphaned LUST sites.

3. Other Redevelopment Programs

EPA grants/loans: Statewide, the DEQ and county and municipal governments have received \$18,895,000 over the last 3 years under the EPA's new brownfield programs for site assessments, cleanups, and revolving loan funds.

Waterfront Redevelopment Grants: Over \$49 million dollars from the Clean Michigan Initiative was granted to 62 grant projects which helped clean up and revitalize waterfront areas, which included providing public access, and improvements in public safety and water quality.

Cool Cities: Governor Jennifer Granholm's Cool Cities Initiative promotes downtown and surrounding neighborhoods that are mixed use, pedestrian friendly, safe and clean, diverse, densely populated, and function 24/7. This Initiative is a multi-faceted, multi-agency effort that emphasizes coordination and collaboration. In order for the state's overall economy to succeed, its traditional downtowns and centers of commerce must gain population, generate business opportunities, and attract private investment. Cool Cities grants have funded 20 projects in 2004, and 29 projects in 2005- at \$100,000 per project.

Web-based Information: The DEQ uses the web to provide public information on cleanup standards, tools, contacts, etc., including updates on field work, new funding opportunities, and cleanup standards.

Collaboration with Other Agencies: The DEQ works directly with the Michigan Economic Development Corporation to identify cooperative

development efforts, ensure program and policy consistency and help identify cleanup and development needs for communities.

D. Legislative Changes to Liability

- Probably the biggest impetus to getting contaminated properties redeveloped was the change in Michigan law from one of strict liability to a causation-based liability standard. Under Part 201 of the Michigan Natural Resources and Environmental Protection Act of 1994, as amended, new purchasers of property can be protected from liability for existing contamination that they did not cause or contribute to through performance of a Baseline Environmental Assessment (BEA). A BEA is an evaluation of the existing conditions at a property so that in the event of a future release of a hazardous substance, there is a means of distinguishing the new release from existing contamination. To ensure the protection of the public health and safety, property owners and operators must comply with Due Care requirements that include preventing exacerbation of existing contamination and mitigating unacceptable exposures. As of August 25, 2005, the DEQ has processed 8616 Baseline Environmental Assessments and 2174 Due Care compliance determinations.
- Michigan's cleanup standards are risk-based and reflect the potential for human health risk from exposures to potentially harmful substances at sites of contamination. The land-use based cleanup standards are based on the intended use of the property. The cleanup categories include residential, commercial and industrial, with residential being the most restrictive based on the greatest opportunity for exposure. A facility cleaned up to residential standards is considered safe for all uses. Commercial and industrial properties pose different risks of exposure and the criteria for such cleanups reflect those differences. There also are categories of "limited" closures that allow for protection of the public health and safety through deed restrictions and institutional controls. Ultimately, the degree of cleanup is based on the risk of exposure.
- Land-use controls, such as deed restrictions and ordinances, are the other leg of the brownfield redevelopment table. By ensuring that such protective measures as barriers, groundwater use limitations, and monitoring continue at sites where contamination exists, we can better anticipate the need for future actions, while minimizing the cost to business to fully remediate their properties.

IV. Continuing Obstacles to Brownfield Redevelopment

- *Federal liability*- many potential property transactions fail due to the inability of the buyer to resolve liability under RCRA, and to a lesser extent, CERCLA. The EPA has made strides in eliminating the CERCLA liability issues, but the inability of a prospective purchaser to resolve RCRA liability

remains a hurdle. In 1996, Michigan entered into an MOA with the EPA which recognized the state's BEA program and limited CERCLA liability issues to National Priority List sites.

- *Unrealistic expectations*- both on the part of the liable parties who own the sites and the buyers who plan on redeveloping the site. One thinks the property is worth more than what it is, the other wants to get as much profit from the deal as possible- thereby creating a disconnect between what the contaminated site is worth (market value minus remediation and transaction costs), and what it may be worth after cleanup.
- *Lack of comprehensive area planning*- a brownfield redevelopment project can be much more successful if done in concert with other nearby supportive developments. In order to achieve the most long-term success for brownfield redevelopment projects, communities need to have comprehensive plans.
- *Lack of sufficient site characterization*- parties interested in redeveloping brownfield sites frequently have an insufficient understanding of the environmental conditions present at those sites. Previously unknown or misunderstood environmental conditions can have significant impacts on the viability of brownfield redevelopment plans. When coupled with the rapid pace that redevelopment transactions often have, this frequently gives rise to significant project delay, increased project cost, and associated controversy.
- *Overwhelming pre-development costs* such as lead and asbestos abatement, demolition costs, and infrastructure replacement- Often the initial investment to get a property ready to be redeveloped is enough to prevent all but the most financially secure developers from even considering a brownfield site. More funding needs to be put into getting buildings either prepared for rehabilitation or demolished to make way for new development, and to invest in new infrastructure.
- *Availability of other properties* that do not have environmental issues (market competition)- Regardless of how much public support is provided, greenfield sites are still highly competitive in terms of their locations, infrastructure, and amenities, most of which cannot be duplicated at brownfield sites.
- *Lack of start-up funds for small businesses*- Small businesspeople need to be provided as much help as possible in order for them to work their way toward a successful business endeavor when it is occurring at a brownfield site. SBA loans and guarantees are not enough.
- *Lack of local government resources*- The inability of local governments to adequately deal with vacant, dangerous buildings, property ownership, and other issues related to brownfield sites is due to several circumstances, including lack of funding, absence of state legislation to clear land titles, and bureaucratic red-tape. Land Banks may fill some of this gap for tax reverted properties, but so far have not shown much success from a brownfield perspective.

- *Lack of federal support for LUST cleanups*- Approximately \$1 million a year is passed through to the DEQ for staff to oversee activities at over 7000 open LUST facilities. No funding actually goes toward cleanups of these sites.

V. Contact Information

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Michigan Department of Environmental Quality: <http://www.michigan.gov/deg>

Cool Cities: <http://www.coolcities.com/>

Michigan Economic Development Corporation: <http://www.michigan.org/>

Renaissance Zones:
<http://medc.michigan.org/services/sitedevelopment/renzone/index.asp>

Links to Brownfield Legislation in Michigan:
www.michiganlegislature.gov

Brownfield Redevelopment Financing Act, Act 381 of 1996
<http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-381-of-1996>

Natural Resources and Environmental Protection Act, Act 451 of 1994
<http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-451-of-1994>

Land Bank Fast Track Act, Act 258 of 2003
<http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-258-of-2003>

Clean Michigan Initiative, Act 284 of 1998
<http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-284-of-1998>